

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEW YORK CITY TRANSIT AUTHORITY,

Plaintiff,

v.

WESTFIELD FULTON CENTER LLC,

Defendant.

Civ. No. 24-cv-1123 (LGS)

**DECLARATION OF ANDRES MARRERO IN SUPPORT OF PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION**

I, ANDRES MARRERO, hereby declare under penalty of perjury that the following is true and correct:

Introduction

1. I am the Chief, Contract Security Initiatives for the New York City Transit Authority (“NYCTA”), an affiliate of the MTA, and have been in this role since November 2021.¹ I joined MTA in 2012. Starting in July 2022, I took over the responsibility of overseeing security services at Fulton Center (or the “Center”).

2. I am submitting this declaration in support of NYCTA’s Reply in Support of its Motion for a Preliminary Injunction and in response to the Declaration of Ms. Diana Grasso. I have read Ms. Grasso’s Declaration and disagree with many of the characterizations she makes.

3. I am familiar with the facts and opinion stated in this declaration.

¹ Undefined capitalized terms have the same meaning as in the Complaint. (ECF No. 6.)

**NYCTA, Local Police Forces, and Westfield
Share the Responsibility for the Safety and Security at Fulton Center**

4. Fulton Center is a large and complex, multimodal hub that integrates subway platforms, public spaces, retail and food stores, art installations, and offices.

5. Through the subway system, the Center connects Lower Manhattan to Queens, Brooklyn, the Bronx, and the rest of Manhattan. With hundreds of thousands of daily customers, Fulton Center is one of the busiest transit hubs in Lower Manhattan. The Center also offers approximately 65,800 square feet of commercial areas and 61,400 square feet of public circulation areas. (**Exhibit A** is excerpts from documents relating to operational security at Fulton Center, including the Concept of Operations, being Exhibit K to the Lease, and the Security Plan referred to at section 7.4 of the Concept of Operations.)

6. Due to the size and multimodality of the Center, NYCTA has tailored security arrangements together with other entities, including local law enforcement and Westfield, to ensure the public safety of Fulton Center.

7. Local law enforcement, NYCTA, and Westfield share security responsibilities. For example, I understand that the NYPD has historically handled the security of the “paid” parts of the public circulation areas (the “Paid Circulation Areas”) of Fulton Center because it is part of the city’s subway system. This includes the areas located after customers pay the subway fare (*e.g.*, after customers swipe their MetroCard and pass through the subway turnstiles).

8. NYCTA is not responsible for providing security services or security cameras in the Commercial Usage Area of Fulton Center; rather, Westfield and/or its subtenants have to provide security arrangements in those areas. (ECF No. 6-1 at 65, § 7.4(c).) The commercial areas that Westfield is responsible for cover over half of the publicly accessible areas of Fulton Center. (Ex. A at 7.)

9. Westfield and/or its subtenants are best positioned to adopt cost-efficient security measures and to decide the best way to conduct their business. For example, if a retailer offers mobile-order pick-up to increase its sales, it has to decide whether it will leave pick-up orders in a secured location, under a store clerk's supervision, or on open shelves. There are business reasons to choose any one of those solutions, and corresponding security risks. Westfield and/or its subtenants are best placed to decide what makes the most sense for their businesses within the retail areas.

10. My colleagues at NYCTA have spoken with Westfield about potential deficiencies of and improvements that may be made to security arrangements in the Commercial Usage Areas for which Westfield is responsible. NYCTA has, for example, recommended that several kiosks should have physical separations from the broader circulation areas and increased security to reduce the risk of stealing.

11. In addition, NYCTA's security team meets with Westfield on a bi-weekly basis to discuss the day-to-day operations of Fulton Center and collaborate regarding security matters.

12. As such, and for the reasons detailed below, Ms. Grasso's statement that NYCTA has "ignored, dismissed, or rebuffed" Westfield as far as security is concerned is incorrect. (ECF No. 37 ¶ 14.)

**NYCTA Endeavors to Maintain Public Safety and Security
Over the Areas it Oversees at the Fulton Center**

13. Ms. Grasso also claims that NYCTA has not provided "adequate security" to Fulton Center and that, as a result, Fulton Center suffered damages due to vandalism. (ECF No. 38 ¶ 17.) I disagree with that statement too.

14. While Fulton Center has of course experienced security incidents, particularly in connection with homelessness and theft, this is an issue that is prevalent across New York City.

15. I know complaints of retail theft in Manhattan have increased substantially in recent years. I am also aware of a rise in subway crime and, unfortunately, a rise in crime in Lower Manhattan, though I understand that the number of misdemeanor offenses is declining in the 1st Precinct (which includes Fulton Center) in 2024. The number of homeless individuals seeking refuge in public spaces, particularly during the winter, has also increased across the city.

16. As a major hub of Lower Manhattan, Fulton Center is not shielded from those trends. As such, Fulton Center, like any other public space, has suffered from this increased criminality, and NYCTA, as well as local law enforcement agencies, are continuing to work on addressing these city-wide issues.

17. In my role, I understand that NYCTA agreed to retain primary responsibility for endeavoring to maintain public safety and security at the Fulton Center. (ECF No. 6-1 at 64, § 7.4(a).) This primary responsibility covers the areas of Fulton Center that are not retail areas—*i.e.*, that are not designated as “Commercial Usage Areas.”

18. The second and third floors of Fulton Center, and the second to eight floors of the adjacent Corbin Building (an office building that is part of the Lease to Westfield), consist mainly of such “Commercial Usage Areas” that fall under the responsibility of Westfield. These floors also contain a “Back of House”, which is an area not accessible to the public and for which NYCTA maintains primary responsibility.

19. The concourse level contains a large amount of unpaid circulation areas, including the “R Line Underpass” that directly connects to the Westfield WTC and to the subway and the “Dey Street Concourse,” which is a concourse linking Westfield WTC to Fulton Center. NYCTA maintains primary responsibility for this area, which is designated as “Unpaid Public Circulation” because this area is accessible without paying a subway fare.

20. The concourse level also contains an important paid circulation area, including the “4/5 Line Underpass,” which is a subway underpass that customers may access after paying the subway fare. I understand that NYCTA maintains primary responsibility for this area but, as indicated above, that responsibility is practically delegated to the NYPD since it is part of the “paid” areas of the New York City subway.

21. NYCTA has implemented several measures to better maintain public safety and security at Fulton Center.

22. NYCTA hired a private security services company to provide security guards and also installed security cameras to enhance security at Fulton Center. I understand that NYCTA has also developed a detailed Security Plan that covers a wide-array of security issues (*see* Ex. A at 10), and that this Security Plan is “a reference guide for all front line security officers assigned to Fulton Center.” (*Id.* at 11.) As such, I understand that security officers are familiar with the plan. NYCTA has made good faith efforts to comply with its Security Plan and I believe it has done so.

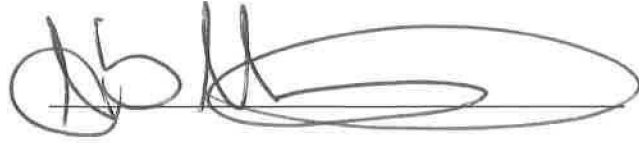
23. In May 2021, NYCTA assigned six security guards to the paid area in the Fulton Center—which is ordinarily overseen by the NYPD—in response to concerns about theft and disorderly conduct. In April 2023, NYCTA added two contracted Security Liaisons to the Subway Security initiative, which NYCTA tasked to provide additional oversight in the paid areas of Fulton Center. In January 2024, NYCTA added three guards for the overnight time period in its continued effort to provide security, and added a NYCTA manager to oversee Fulton Center and manage security issues.

24. When NYCTA detects criminal activity, it is reported to law enforcement agencies, who are then responsible for following up on such reports. Such agencies include the NYPD,

NYC Transit Security, and MTA Police Department. NYCTA also coordinates with MTA Homelessness Outreach to address issues regarding homelessness and provide assistance to homeless individuals. Through these measures and other efforts, NYCTA works collaboratively with these agencies to try to address security measures at the Fulton Center and promote safety.

Dated: April 10, 2024

New York, New York

A handwritten signature in dark ink, consisting of a stylized 'A' followed by a series of loops and a long horizontal stroke.

Andres Marrero